

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE No. 38389  
Issued to: Wayne BRUCE

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2443

Wayne BRUCE

This appeal has been taken in accordance with 46 USC 7702 and 46 CFR 5.701.

By order dated 28 April 1986, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's license outright for one month, plus an additional six months remitted on twelve months' probation upon finding proved the charge of negligence. The specification alleges that Appellant, while serving as operator aboard the M/V MIRIAM M. DEFELICE, under the authority of the captioned document, failed to properly attain and/or use available weather information prior to proceeding to sea with the M/V MIRIAM M. DEFELICE and the tow GULF FLEET 263, contributing to the failure of the towing connection and grounding of the barge GULF FLEET 263. A second specification under the charge of negligence, alleging a failure to properly examine towing gear, was found not proved and was dismissed.

The hearing was held at Jacksonville, Florida, on 21 and 30 January 1986.

At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced in evidence ten exhibits and the testimony of two witnesses.

In defense, Appellant introduced in evidence six exhibits and his own testimony.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved, and entered a written order suspending all licenses and/or documents issued to Appellant outright for one month, plus an additional two months remitted on twelve months' probation.

The complete Decision and Order was served on 12 July 1986.

Appeal was timely filed on 8 May 1986 and perfected on 25 June 1986.

#### FINDINGS OF FACT

At all times relevant on 22 November 1984, Appellant was serving as operator aboard the M/V MIRIAM M. DEFELICE under the authority of his Coast Guard license which authorizes him to act as operator of uninspected towing vessels upon oceans and the inland waters of the United States. The M/V MIRIAM M. DEFELICE is an uninspected towing vessel of 198 gross tons, 118.7 feet in length. On 22 November 1984, the MIRIAM M. DEFELICE was towing the barge GULF FLEET 263, an inspected deck barge 260 feet in length, with a cargo of containers of varying sizes on a voyage to Puerto Rico.

The flotilla departed Green Cove Springs, Florida, on the St. Johns River, at approximately 0430 on 22 November 1984. At about 0500, the GULF FLEET 263, IN TOW OF THE MIRIAM M. DEFELICE on a stern hawser shackled to a towing bridle attached to the bow of the barge, allided with the fender system at the Buckman Bridge. (That allision is the subject of separate proceedings involving the pilot on board.) Subsequently, the flotilla continued northbound, toward the mouth of the St. Johns River.

During this transit, Appellant, who had taken control of the vessel after the allision at the Buckman Bridge, checked weather condition by monitoring the local NOAA weather station. He also contacted the local pilot station, and was informed that the wind was from the northeast at 20 knots and that the seas beyond the jetties, which extend seaward from either side of the mouth of the river, were running 8-10 feet.

The seas experienced in transiting the waters within the jetties were approximately 8-10 feet. The seas worsened when the flotilla cleared the jetties outbound. At this point, the shackle the towing hawser to the bridle broke, casting the barge adrift. Appellant's subsequent efforts to retrieve the barge failed, and it drifted slowly southward along the beach, eventually grounding on Jacksonville Beach.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges that:

1. It is inappropriate to apply a presumption of negligence since the grounding occurred not as a direct result of Appellant's negligence, but several hours after the alleged negligence, because of the fortuitous circumstance of the wind direction.

2. It is inappropriate to apply a presumption of negligence since the grounding occurred due to a mechanical defect "which the Administrative Law Judge acknowledged was not known and should not have been known" to Appellant.

3. Even if a presumption of negligence is applicable, the Administrative Law Judge erred in not finding the presumption rebutted.

Because of the disposition of the first of these contentions, the others are not discussed.

Appearance: William B. Gibbens III, Esq., Lea & Gibbens, Queen and Crescent Bldg., Suite 1100, 344 Camp St., New Orleans, LA 70130.

#### OPINION

##### I

Appellant assigns error to the Administrative Law Judge's application of the presumption of negligence that arises when a vessel grounds.

In support of this contention, Appellant first argues that no grounding has been proven, since the only evidence that a grounding occurred is contained in the two Reports of Marine Accident, Injury or Death (Forms CG-2692) (I.O. Exh. 4 and 5) for the MIRIAM M. DEFELICE and the GULF FLEET 263, which had been filled out by an attorney representing Appellant's employer, and that these documents should have been excluded as hearsay. The forms are not, however, as Appellant argues, inadmissible. Hearsay evidence is not inadmissible in suspension and revocation proceedings. Strict adherence to the rules of evidence observed in courts is not required. 46 CFR 5.537. It is undisputed that, if the Forms CG-2692 had been signed by Appellant, they would have been excluded from evidence in this hearing as an admission during a Coast Guard investigation by the person charged. 46 CFR 5.551 and Appeal Decision 1913 (GOLDING). However, the forms were not signed by Appellant. In Appeal Decision 903 (MANHOOD), it was held that a master's report of personal injury, required by regulation, was admissible in a suspension and revocation proceeding in which another crewmember was charged, citing Sternberg Dredging Co. v. Moran Towing & Transp. Co., Inc., 196 F.2d 1002, 1004 (2d Cir. 1952), where the Court held that a report filed pursuant to a federal regulation was an official government record and as such admissible in evidence. Here, the reports recited that "[t]he barge cleared the jetties and proceeded in a southwesterly direction until it came to rest on the beaches in Jacksonville. . . ." Appellant does not argue, nor has he introduced evidence to

show, that the information contained on the Forms CG-2692 is not trustworthy. Appellant made no objection to the introduction of these reports, (Record at 25) and may not now complain about evidence which was introduced at the hearing without objection. See Appeal Decision 2400 (WIDMAN). I find that the reports were properly admitted by the Administrative Law Judge, and properly used to show that a grounding of the GULF FLEET 263 occurred.

Appellant contends next that, even if a grounding is assumed to have been proved, the application of the presumption of negligence is not appropriate because the presumption applies only to those cases where there has been some navigational error that caused the grounding. He urges that the reason the barge grounded was due to the "fortuitous circumstance of wind direction" and that if the wind had been blowing in some other direction, the grounding might not have occurred. Thus, he argues, since there has been no showing that he committed any navigational error, the presumption cannot apply. This argument misstates the law, since it presupposes a showing of a navigational error as a condition precedent to the application of a presumption.

It is well settled, however, that presumption of negligence arises when a vessel grounds on a clearly designated shoal, or in a place where it has not business being. Appeal Decision 2382 (NILSEN), aff'd sub nom., Commandant v. Nilsen, NTSB Order No. EM-126 (1985). The presumption eliminates the requirement for a showing of navigational error, since "[i]t has the effect of a prima facie case . . . of negligent navigation." Commandant v. Tingley, NTSB Order No. EM-86 (1981). Once the factual basis for the presumption is established, "the burden is on the tug to rebut the prime facie case or, at least, to show a reasonable excuse for the accident other than its own negligence." Bisso v. Waterways Transportation Co. 235 F.2d 741, 744 (5th Cir. 1956), quoted in Mid-America Transportation Co. Inc. v. National Marine Service, Inc. 497 F.2d 776, 780 (8th Cir. 1974). See Appeal Decision 2174 (TINGLEY), aff'd sub nom., Commandant v. Tingley, NTSB Order EM-86 (1981).

In this case, however, the specification alleged that Appellant had failed to properly attain and/or use available weather information prior to proceeding to sea. The Administrative Law Judge found this allegation not proved. (Decision and Order at 8.) However, the Administrative Law Judge went on to find "that portion of the specification which concerns the grounding which gave rise to the presumption of negligence" proved. (Decision and Order at 12.) Thus, there was insufficient evidence to prove the act of negligence which Appellant allegedly committed, and the Administrative Law Judge specifically found that Appellant was not negligent as charged. To find Appellant negligent under these

circumstances is improper, since the specification as written did not enable Appellant "to identify the act or offense so that a defense can be prepared." 46 CFR 5.25. While a specification need not meet the technical requirements of court pleadings, it must contain "wording . . . sufficient to place Appellant on notice of the commissions or omission with which he [is] charged." Appeal Decision 2304 (HABECK). (Specification held adequate where Appellant had been charged with failure to properly supervise vessel's bridge watch, contributing to grounding.)

#### CONCLUSION

The finding of the Administrative Law Judge as to the charge of negligence is not supported by substantial evidence of a reliable and probative character.

#### ORDER

The decision of the Administrative Law Judge dated at Jacksonville, Florida, on 28 April 1986 is VACATED, the findings are SET ASIDE, and the charge and specification is DISMISSED.

J. C. IRWIN  
Vice Admiral, U. S. Coast Guard  
VICE COMMANDANT

Signed at Washington, D.C. this 5th day of January, 1987.